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11 **UNITED STATES DISTRICT COURT**  
12 **CENTRAL DISTRICT OF CALIFORNIA**  
13 **WESTERN DIVISION**

14 **JIMMIE LEE LYONS,**

15 Plaintiff,

16 vs.

17 **A.W. CHESTERTON COMPANY;**  
18 **AIR & LIQUID SYSTEMS**  
19 **CORPORATION** (*sued individually and*  
20 *as successor-by-merger to BUFFALO*  
21 *PUMPS, INC.);*  
22 **CBS CORPORATION** (*f/k/a VIACOM,*  
23 *INC., successor by merger with CBS*  
24 *CORPORATION f/k/a WESTINGHOUSE*  
25 *ELECTRIC CORPORATION and as*  
26 *successor-in-interest to BF*  
27 *STURTEVANT);*  
28 **CERTAINTEED CORPORATION;**  
**CRANE CO.;**  
**FMC CORPORATION** (*sued*  
*individually*)

Case No.

**COMPLAINT FOR PERSONAL  
INJURY – ASBESTOS  
(NEGLIGENCE; STRICT PRODUCTS  
LIABILITY; FALSE  
REPRESENTATION; INTENTIONAL  
TORT/INTENTIONAL FAILURE TO  
WARN/CONCEALMENT);  
DEMAND FOR JURY TRIAL**

1 *and as successor-in-interest to* PEERLESS  
PUMP CO.);  
2 **GENERAL ELECTRIC COMPANY;**  
3 **HENRY COMPANY LLC;**  
4 **INDIAN HEAD INDUSTRIES, INC.;**  
5 **INGERSOLL-RAND COMPANY;**  
6 **ITT CORPORATION** *f/k/a ITT*  
7 *INDUSTRIES, INC. (sued individually and*  
8 *as successor-in-interest to* BELL &  
9 *GOSSETT PUMP CO.);*  
10 **METALCLAD INSULATION LLC**  
11 *(sued individually and as successor-by-*  
12 *merger to* METALCLAD INSULATION  
13 *CORPORATION);*  
14 **PARKER-HANNIFIN**  
15 **CORPORATION**  
16 *(sued individually and as successor-in-*  
17 *interest to* SACOMA-SIERRA, INC.);  
18 **STERLING FLUID SYSTEMS (USA),**  
19 **LLC** *(f/k/a* PEERLESS PUMP  
20 *COMPANY);*  
21 **SYD CARPENTER, MARINE**  
22 **CONTRACTOR, INC.;**  
23 **THE W.W. HENRY COMPANY, L.P.**  
24 *f/k/a* THE W.W. HENRY COMPANY and  
25 HENRY ASPHALT COMPANY;  
26 **THOMAS DEE ENGINEERING CO.,**  
27 **INC.;**  
28 **TRIPLE A MACHINE SHOP, INC.;**  
**UNION CARBIDE CORPORATION;**  
and **DOES 1-450 INCLUSIVE,**

Defendants.

1 Plaintiff JIMMIE LEE LYONS, by and through his attorneys, hereby alleges as  
2 follows:

### 3 JURISDICTION AND VENUE

4 1. This Court has original jurisdiction under 28 U.S.C. § 1332, in that it is a civil  
5 action between citizens of different states in which the matter in controversy exceeds,  
6 exclusive of costs and interest, seventy-five thousand dollars.

7 2. Venue is proper under 28 U.S.C. § 1391 in the Central District of California  
8 because a substantial part of the actions or omissions giving rise to this case occurred within  
9 this district.

### 10 PARTIES

11 3. Plaintiff in this action, JIMMIE LEE LYONS, is a resident of the state of  
12 Arkansas.

13 4. Plaintiff JIMMIE LEE LYONS sustained an asbestos-related lung disease by  
14 the inhalation of asbestos fibers released during the handling of asbestos-containing  
15 products, including at Plaintiff's worksites.

16 5. The pathogenesis of Plaintiff JIMMIE LEE LYONS' asbestos-related diseases  
17 is explained on **Exhibit A**, attached to Plaintiff's complaint and incorporated by reference  
18 herein.

19 6. All of Plaintiff's claims arise out of repeated exposure to asbestos-containing  
20 products manufactured, distributed, and/or sold by defendants, and/or the supplied to,  
21 installed and/or maintained by defendants at Plaintiff JIMMIE LEE LYONS' worksites,  
22 over a period of years, caused from release of toxic asbestos fibers and subsequent  
23 inhalation by the Plaintiff JIMMIE LEE LYONS, resulting in cumulative, progressive,  
24 incurable lung diseases.

25 7. Plaintiff JIMMIE LEE LYONS claims damages for an asbestos-related  
26 disease arising from a series of occurrences not dependent on Plaintiff's worksite but on the  
27 fact that asbestos-containing products, when handled in the manner in which they were  
28

intended, released harmful asbestos fibers which when inhaled by Plaintiff, caused serious lung disease.

8. As used herein, Plaintiff shall mean the above-captioned asbestos-injured Plaintiff JIMMIE LEE LYONS.

9. Plaintiff is informed and believes, and thereon alleges that at all times herein mentioned, Defendants were and are corporations, partnerships, unincorporated associations, sole proprietorships and/or other business entities organized and existing under and by virtue of the laws of the State of California, or the laws of some other state or foreign jurisdiction, and that said defendants, and each of them, were and are authorized to do and are doing business in the State of California, and that said defendants have regularly conducted business in the County of Los Angeles, State of California.

10. Defendants are each corporations incorporated under the laws of and having its principal places of business in the following States:

DEFENDANT	STATE
<b>A.W. CHESTERTON COMPANY</b>	Massachusetts; Massachusetts
<b>AIR &amp; LIQUID SYSTEMS CORPORATION</b> ( <i>sued individually and as successor-by-merger to BUFFALO PUMPS, INC.</i> )	Pennsylvania; Pennsylvania
<b>CBS CORPORATION</b> ( <i>f/k/a VIACOM, INC., successor by merger with CBS CORPORATION f/k/a WESTINGHOUSE ELECTRIC CORPORATION and as successor-in-interest to BF STURTEVANT</i> )	Delaware; New York
<b>CERTAINTED CORPORATION</b>	Delaware; Pennsylvania
<b>CRANE CO.</b>	Delaware; Connecticut
<b>FMC CORPORATION</b> ( <i>sued individually and as successor-in-interest to PEERLESS PUMP CO.</i> )	Delaware; Pennsylvania
<b>GENERAL ELECTRIC COMPANY</b>	New York; Massachusetts

DEFENDANT	STATE
<b>HENRY COMPANY LLC</b>	California; California
<b>INDIAN HEAD INDUSTRIES, INC.</b>	Delaware; North Carolina
<b>INGERSOLL-RAND COMPANY</b>	New Jersey; North Carolina
<b>ITT CORPORATION</b> <i>f/k/a ITT INDUSTRIES, INC. (sued individually and as successor-in-interest to BELL &amp; GOSSETT PUMP CO.)</i>	Indiana; New York
<b>METALCLAD INSULATION LLC</b> <i>(sued individually and as successor-by-merger to METALCLAD INSULATION CORPORATION)</i>	Delaware; Minnesota
<b>PARKER-HANNIFIN CORPORATION</b> <i>(sued individually and as successor-in-interest to SACOMA-SIERRA, INC.)</i>	Ohio; Ohio
<b>STERLING FLUID SYSTEMS (USA), LLC</b> <i>(f/k/a PEERLESS PUMP COMPANY)</i>	Delaware; Indiana
<b>SYD CARPENTER, MARINE CONTRACTOR, INC.</b>	California; California
<b>THE W.W. HENRY COMPANY, L.P.</b> <i>f/k/a THE W.W. HENRY COMPANY and HENRY ASPHALT COMPANY</i>	California; California
<b>THOMAS DEE ENGINEERING CO., INC.</b>	California; California
<b>TRIPLE A MACHINE SHOP, INC.</b>	California; California
<b>UNION CARBIDE CORPORATION</b>	New York; Michigan

### **FIRST CAUSE OF ACTION**

#### **(NEGLIGENCE)**

11. At all times herein mentioned, each of the named defendants was the successor, successor in business, successor in product line or a portion thereof, assign, predecessor, predecessor in business, predecessor in product line or a portion thereof, parent, holding company, affiliate, venturer, co-venturer, subsidiary, wholly or partially

owned by, or the whole or partial owner of or member in an entity researching, studying, manufacturing, fabricating, designing, modifying, failing to retrofit, labeling, assembling, distributing, leasing, buying, offering for sale, supplying, selling, inspecting, testing, authorizing, approving, certifying, facilitating, promoting, representing, endorsing servicing, installing, contracting for installation, repairing, marketing, warranting, rebranding, manufacturing for others, packaging, specifying, requiring, mandating, or otherwise directing and/or facilitating the use of, or advertising a certain product, namely asbestos, and/or other products containing asbestos. Said entities shall hereinafter collectively be called ALTERNATE ENTITIES. Each of the herein named defendants is liable for the tortious conduct of each successor, successor in business, successor in product line or a portion thereof, assign, predecessor in product line or a portion thereof, parent, holding company, affiliate, venturer, co-venturer, subsidiary, whole or partial owner, or wholly or partially owned entity, or entity that it was a member of, or funded, that researched, studied, manufactured, fabricated, designed, modified, failed to retrofit, labeled, assembled, distributed, leased, bought, offered for sale, supplied, sold, inspected, serviced, installed, contracted for installation, repaired, marketed, warranted, rebranded, manufactured for others and advertised a certain product, namely asbestos, and other products containing asbestos. The defendants, and each of them, are liable for the acts of each and every ALTERNATE ENTITY, and each of them, in that there has been a virtual destruction of Plaintiff's remedy against each such ALTERNATE ENTITY; defendants, and each of them, have acquired the assets, product line, or a portion thereof, of each such ALTERNATE ENTITY; defendants, and each of them, caused the destruction of Plaintiff's remedy against each such ALTERNATE ENTITY; each such defendant has the ability to assume the risk-spreading role of each such ALTERNATE ENTITY; and that each such defendant enjoys the goodwill originally attached to each such ALTERNATE ENTITY.

12. At all times herein mentioned, defendants, their ALTERNATE ENTITIES, and each of them, were and are engaged in the business of researching, manufacturing,

1 fabricating, designing, modifying, failing to retrofit, labeling, assembling, distributing,  
2 leasing, buying, offering for sale, supplying, selling, inspecting, endorsing, testing,  
3 authorizing, approving, certifying, facilitating, promoting, representing, servicing,  
4 installing, contracting for installation, repairing, marketing, warranting, rebranding,  
5 manufacturing for others, packaging, specifying, requiring, mandating, or otherwise  
6 directing and/or facilitating the use of, or advertising a certain product, namely asbestos and  
7 other products containing asbestos.

8 13. In part, and without limitation as to other defendants, defendants  
9 METALCLAD INSULATION LLC (*sued individually and as successor-by-merger to*  
10 METALCLAD INSULATION CORPORATION); SYD CARPENTER, MARINE  
11 CONTRACTOR, INC.; THOMAS DEE ENGINEERING CO., INC.; and TRIPLE A  
12 MACHINE SHOP, INC., manufactured, modified, failed to retrofit, serviced and/or  
13 repaired asbestos-containing ships and vessels.

14 14. At all times herein mentioned, defendants, their ALTERNATE ENTITIES and  
15 each of them, singularly and jointly, negligently, and carelessly researched, manufactured,  
16 fabricated, designed, modified, failed to retrofit, tested or failed to test, abated or failed to  
17 abate, warned or failed to warn of the health hazards, labeled, assembled, distributed,  
18 leased, bought, offered for sale, supplied, sold, inspected, serviced, authorized, approved,  
19 certified, facilitated, promoted, installed, represented, endorsed, contracted for installation  
20 of, repaired, marketed, warranted, rebranded, manufactured for others, packaged and  
21 advertised, a certain product, namely asbestos, and other products containing asbestos, in  
22 that said products caused personal injuries to users, consumers, workers, bystanders and  
23 others, including the Plaintiff herein (hereinafter collectively called “exposed persons”),  
24 while being used in a manner that was reasonably foreseeable, thereby rendering said  
25 products hazardous, unsafe and dangerous for use by “exposed persons.”

26 15. Defendants, their ALTERNATE ENTITIES, and each of them, had a duty to  
27 exercise due care in the pursuance of the activities mentioned above and defendants, and  
28



1 each of them, breached said duty of due care.

2 16. Defendants, their ALTERNATE ENTITIES and each of them, knew, or  
3 should have known, and intended that the aforementioned asbestos and products containing  
4 asbestos and related products and equipment, would be transported by truck, rail, ship, and  
5 other common carriers, that in the shipping process the products would break, crumble, or  
6 be otherwise damaged; and/or that such products would be used for insulation, construction,  
7 plastering, fireproofing, soundproofing, automotive, aircraft and/or other applications,  
8 including, but not limited to unpacking, preparing, using, sawing, drilling, chipping,  
9 hammering, scraping, sanding, breaking, removing, maintaining, inspecting, “rip-out”, and  
10 other manipulation, resulting in the release of airborne asbestos fibers, and that through  
11 such foreseeable use and/or handling “exposed persons”, including Plaintiff herein, would  
12 use or be in proximity to and exposed to said asbestos fibers, which contaminated the  
13 packaging, products, environment, and clothing of persons working in proximity to said  
14 products, directly or through reentrainment.

15 17. Plaintiff has used, handled, or been otherwise exposed to asbestos and  
16 asbestos-containing products referred to herein in a manner that was reasonably  
17 foreseeable. Plaintiff’s exposure to asbestos and asbestos-containing products is on current  
18 information as set forth at various locations and circumstances in Exhibit A, attached to  
19 Plaintiff’s complaint and incorporated by reference herein.

20 18. As a direct and proximate result of the acts, omissions, and conduct of the  
21 defendants, their ALTERNATE ENTITIES, and each of them, as aforesaid, Plaintiff’s  
22 exposure to asbestos and asbestos-containing products caused severe and permanent injury,  
23 damage, loss, or harm to the Plaintiff as set forth in Exhibit A, attached to Plaintiff’s  
24 complaint and incorporated by reference herein.

25 19. Plaintiff is informed and believes, and thereon alleges, that progressive lung  
26 disease, cancer, and other serious diseases are caused by inhalation or ingestion of asbestos  
27 fibers without perceptible trauma and that said injury, damage, loss, or harm results from  
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1 exposure to asbestos and asbestos-containing products over a period of time.

2 20. Plaintiff suffers from a condition related to exposure to asbestos and  
3 asbestos-containing products. Plaintiff was not aware at the time of exposure that asbestos  
4 or asbestos-containing products presented risk of injury and/or disease.

5 21. As a direct and proximate result of the aforesaid conduct of defendants, their  
6 ALTERNATE ENTITIES, and each of them, Plaintiff has suffered, and continue to suffer,  
7 permanent injuries and/or future increased risk of injuries to their persons, body and health,  
8 including, but not limited to, asbestosis, other lung damage, and cancer, and the mental and  
9 emotional distress attendant thereto, from the effect of exposure to asbestos fibers, all to  
10 Plaintiff's general damage.

11 22. As a direct and proximate result of the aforesaid conduct of the defendants,  
12 their ALTERNATE ENTITIES, and each of them, Plaintiff has incurred, is presently  
13 incurring, and will incur in the future, liability for physicians, surgeons, nurses, hospital  
14 care, medicine, hospices, x-rays and other medical treatment, the true and exact amount  
15 thereof being unknown to Plaintiff at this time, and Plaintiff prays leave to amend this  
16 complaint accordingly when the true and exact cost thereof is ascertained.

17 23. As a further direct and proximate result of the said conduct of the defendants,  
18 their ALTERNATE ENTITIES, and each of them, Plaintiff has incurred pecuniary losses,  
19 the full nature and extent of which are not yet known to Plaintiff; and leave is requested to  
20 amend this complaint to conform to proof at the time of trial.

21 24. Defendants, their ALTERNATE ENTITIES, and each of them, and their  
22 officers, directors and managing agents participated in, authorized, expressly and impliedly  
23 ratified, and had full knowledge of, or should have known of, each of the acts set forth  
24 herein.

25 25. Defendants, their ALTERNATE ENTITIES, and each of them, are liable for  
26 the fraudulent, oppressive, and malicious acts of their ALTERNATE ENTITIES, and each  
27 of them, and each defendant's officers, directors and managing agents participated in,  
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1 authorized, expressly and impliedly ratified, and had full knowledge of, or should have  
2 known of, the acts of each of their ALTERNATE ENTITIES as set forth herein.

3 26. The herein-described conduct of said defendants listed in this paragraph  
4 below, their ALTERNATE ENTITIES, and each of them, was and is willful, malicious,  
5 fraudulent, outrageous and in conscious disregard and indifference to the safety and health  
6 of “exposed persons.” Plaintiff, for the sake of example and by way of punishing said  
7 defendants, seeks punitive damages according to proof against all defendants and their  
8 “alternate entities.”

9 WHEREFORE, Plaintiff prays judgment against defendants, their ALTERNATE  
10 ENTITIES, and each of them, as hereinafter set forth.

## 11 **SECOND CAUSE OF ACTION**

### 12 **(Strict Products Liability)**

13  
14 27. Plaintiff incorporates herein by reference, as though fully set forth herein, the  
15 allegations contained in each of the preceding paragraphs.

16 28. Defendants, their ALTERNATE ENTITIES, and each of them, knew and  
17 intended that the above-referenced asbestos and asbestos-containing products would be  
18 used by the purchaser or user without inspection for defects therein or in any of their  
19 component parts and without knowledge of the hazards involved in such use.

20 29. Said asbestos and asbestos-containing products were defective and unsafe for  
21 their intended purpose in that the inhalation of asbestos fibers causes serious disease and/or  
22 death. The defect existed in the said products at the time they left the possession of  
23 defendants, their ALTERNATE ENTITIES, and each of them. Said products did, in fact,  
24 cause personal injuries, including asbestosis, other lung damage, and cancer to “exposed  
25 persons”, including Plaintiff herein, while being used in a reasonably foreseeable manner,  
26 thereby rendering the same defective, unsafe and dangerous for use.

27 30. “Exposed persons” did not know of the substantial danger of using said  
28

1 products. Said dangers were not readily recognizable by “exposed persons.” Said  
2 defendants, their ALTERNATE ENTITIES, and each of them, further failed to adequately  
3 warn of the risks to which Plaintiff and others similarly situated were exposed.

4 31. In researching, manufacturing, fabricating, designing, modifying, failing to  
5 retrofit, testing or failing to test, warning or failing to warn, labeling, assembling,  
6 distributing, leasing, buying, offering for sale, supplying, selling, inspecting, servicing,  
7 installing, contracting for installation, repairing, marketing, warranting, rebranding,  
8 manufacturing for others, packaging and advertising asbestos and asbestos-containing  
9 products, defendants, their ALTERNATE ENTITIES, and each of them, did so with  
10 conscious disregard for the safety of “exposed persons” who came in contact with said  
11 asbestos and asbestos-containing products, in that said defendants, their ALTERNATE  
12 ENTITIES, and each of them, had prior knowledge that there was a substantial risk of injury  
13 or death resulting from exposure to asbestos or asbestos-containing products, including, but  
14 not limited to, asbestosis, other lung damages and cancer. Said knowledge was obtained, in  
15 part, from scientific studies performed by, at the request of, or with the assistance of, said  
16 defendants, their ALTERNATE ENTITIES, and each of them, and which knowledge was  
17 obtained by said defendants, their ALTERNATE ENTITIES, and each of them on or before  
18 1930, and thereafter.

19 32. On or before 1930, and thereafter, said defendants, their ALTERNATE  
20 ENTITIES and each of them, were aware that members of the general public and other  
21 “exposed persons”, who would come in contact with their asbestos and asbestos-containing  
22 products, had no knowledge or information indicating that asbestos or asbestos-containing  
23 products could cause injury, and said defendants, their ALTERNATE ENTITIES, and each  
24 of them, knew that members of the general public and other “exposed persons”, who came  
25 in contact with asbestos and asbestos-containing products, would assume, and in fact did  
26 assume, that exposure to asbestos and asbestos-containing products was safe, when in fact  
27 said exposure was extremely hazardous to health and human life.  
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1           33. With said knowledge, said defendants, their ALTERNATE ENTITIES, and  
2 each of them, opted to research, manufacture, fabricate, design, modify, fail to retrofit,  
3 label, assemble, distribute, lease, buy, offer for sale, supply, sell, inspect, service, install,  
4 contract for installation, repair, market, warrant, rebrand, manufacture for others, package  
5 and advertise said asbestos and asbestos-containing products without attempting to protect  
6 “exposed persons” from or warn “exposed persons” of, the high risk of injury or death  
7 resulting from exposure to asbestos and asbestos-containing products. Rather than  
8 attempting to protect “exposed persons” from, or warn “exposed persons” of, the high risk  
9 of injury or death resulting from exposure to asbestos and asbestos-containing products,  
10 defendants, their ALTERNATE ENTITIES, and each of them, intentionally failed to reveal  
11 their knowledge of said risk, and consciously and actively concealed and suppressed said  
12 knowledge from “exposed persons” and members of the general public, thus impliedly  
13 representing to “exposed persons” and members of the general public that asbestos and  
14 asbestos-containing products were safe for all reasonably foreseeable uses. Defendants,  
15 their ALTERNATE ENTITIES, and each of them, engaged in this conduct and made these  
16 implied representations with the knowledge of the falsity of said implied representations.

17           34. The above-referenced conduct of said defendants, their ALTERNATE  
18 ENTITIES, and each of them, was motivated by the financial interest of said defendants,  
19 their ALTERNATE ENTITIES, and each of them, in the continuing, uninterrupted  
20 research, design, modification, failure to retrofit, manufacture, fabrication, labeling,  
21 assembly, distribution, lease, purchase, offer for sale, supply, sale, inspection, installation,  
22 contracting for installation, repair, marketing, warranting, rebranding, manufacturing for  
23 others, packaging and advertising of asbestos and asbestos-containing products. In  
24 pursuance of said financial motivation, said defendants, their ALTERNATE ENTITIES,  
25 and each of them, consciously disregarded the safety of “exposed persons” and in fact were  
26 consciously willing and intended to permit asbestos and asbestos-containing products to  
27 cause injury to “exposed persons” and induced persons to work with and be exposed  
28

1 thereto, including Plaintiff.

2 35. Plaintiff alleges that the aforementioned defendants, their ALTERNATE  
3 ENTITIES, and each of them impliedly warranted their asbestos and asbestos-containing  
4 products to be safe for their intended use but that their asbestos and asbestos-containing  
5 products, created an unreasonable risk of bodily harm to exposed persons.

6 36. Plaintiff further alleges his injuries are a result of cumulative exposure to  
7 asbestos and various asbestos-containing products manufactured, fabricated, inadequately  
8 researched, designed, modified, failed to retrofit, inadequately tested, labeled, assembled,  
9 distributed, leased, bought, offered for sale, supplied, sold, inspected, serviced, installed,  
10 contracted for installation, repaired, marketed, warranted, rebranded, manufactured for  
11 others, packaged and advertised by the aforementioned defendants, their ALTERNATE  
12 ENTITIES, and each of them and that Plaintiff cannot identify precisely which asbestos or  
13 asbestos-containing products caused the injuries complained of herein.

14 37. Plaintiff relied upon defendants', their "alternate entities", and each of their  
15 representations, lack of warnings, and implied warranties of fitness of asbestos and their  
16 asbestos-containing products. As a direct, foreseeable and proximate result thereof, Plaintiff  
17 has been injured permanently as alleged herein.

18 38. As a direct and proximate result of the actions and conduct outlined herein,  
19 Plaintiff has suffered the injuries and damages previously alleged.

20 WHEREFORE, Plaintiff prays judgment against defendants, their ALTERNATE  
21 ENTITIES, and each of them, as hereinafter set forth.

### 22 23 **THIRD CAUSE OF ACTION**

#### 24 **(False Representation)**

25 39. Plaintiff incorporates herein by reference, as though fully set forth herein, the  
26 allegations contained in each of the preceding paragraphs.

27 40. At the aforementioned time when Defendants, their ALTERNATE  
28

1 ENTITIES, and each of them, researched, manufactured, fabricated, designed, modified,  
2 tested or failed to test, inadequately warned or failed to warn, labeled, assembled,  
3 distributed, leased, bought, offered for sale, supplied, sold, inspected, serviced, installed,  
4 contracted for installation, repaired, marketed, warranted, re-branded, manufactured for  
5 others, packaged and advertised the said asbestos and asbestos-containing products, as  
6 hereinabove set forth, the Defendants, their ALTERNATE ENTITIES, and each of them,  
7 expressly and impliedly represented to members of the general public, including the  
8 purchasers and users of said product, and other “exposed persons”, including, without  
9 limitation, Plaintiff JIMMIE LEE LYONS and his employers, that asbestos and  
10 asbestos-containing products, were of merchantable quality, and safe for the use for which  
11 they were intended.

12 41. The purchasers and users of said asbestos and asbestos-containing products,  
13 and other “exposed persons”, including, without limitation, Plaintiff JIMMIE LEE  
14 LYONS, and his employers, relied upon said representations of Defendants, their  
15 ALTERNATE ENTITIES, and each of them, in the selection, purchase, and use of asbestos  
16 and asbestos-containing products.

17 42. Said representation by Defendants, their ALTERNATE ENTITIES, and each  
18 of them, were false and untrue, and Defendants knew at the time they were untrue, in that  
19 the asbestos and asbestos-containing products and equipment were not safe for their  
20 intended use, nor were they of merchantable quality as represented by Defendants, their  
21 ALTERNATE ENTITIES, and each of them, in that asbestos and asbestos-containing  
22 products and equipment have very dangerous properties and defects whereby said products  
23 cause asbestosis, other lung damages, and cancer, and have other defects that cause injury  
24 and damage to the users of said products and other “exposed persons”, thereby threatening  
25 the health and life of said persons, including Plaintiff JIMMIE LEE LYONS herein.

26 43. As a direct and proximate result of said false representations by Defendants,  
27 their ALTERNATE ENTITIES, and each of them, Plaintiff sustained the injuries and  
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1 damages alleged herein.

2 WHEREFORE, Plaintiff prays for judgment against Defendants, their ALTERNATE  
3 ENTITIES, and each of them, as hereinafter set forth.

4  
5 **FOURTH CAUSE OF ACTION**

6 **(Intentional Tort / Intentional Failure to Warn / Concealment)**

7 44. Plaintiff incorporates herein by reference, as though fully set forth herein, the  
8 allegations contained in each of the preceding paragraphs.

9 45. At all times pertinent hereto, the Defendants, their ALTERNATE ENTITIES,  
10 and each of them, owed Plaintiff a duty, as provided for in Section 1708, 1709, and 1710 of  
11 the Civil Code of the State of California, to abstain from injuring the person, property, or  
12 rights of the Plaintiff. When a duty to act was imposed, as set forth herein, the Defendants,  
13 their ALTERNATE ENTITIES, and each of them, did do the acts and omissions in  
14 violation of that duty, thereby causing injury to the Plaintiff as is more fully set forth herein.  
15 Such acts and omissions consisted of acts falling within Section 1709 (Fraudulent Deceit)  
16 and Section 1710 (Deceit) of the Civil Code of the State of California and, more  
17 specifically, included suggestions of fact which were not true and which Defendants, their  
18 ALTERNATE ENTITIES, and each of them, did not believe to be true; assertions of fact  
19 which were not true and which Defendants, their ALTERNATE ENTITIES, and each of  
20 them, had no reasonable ground for believing to be true, and the suppression of fact when a  
21 duty existed to disclose it, all as more fully set forth herein; the violation of any one such  
22 duty gave rise to a cause of action for violation of rights of the Plaintiff as provided for in  
23 the aforementioned Civil Code sections.

24 46. Since on or before 1930, the Defendants, their ALTERNATE ENTITIES, and  
25 each of them, have known and have possessed the true facts of medical and scientific data  
26 and other knowledge which clearly indicated that the asbestos and asbestos-containing  
27 products and equipment referred to in Plaintiff's First Cause of Action were and are  
28



1 hazardous to the health and safety of Plaintiff, and others in Plaintiff JIMMIE LEE  
2 LYONS's position working in close proximity with such materials. The Defendants, their  
3 ALTERNATE ENTITIES, and each of them, have known of the dangerous propensities of  
4 the aforementioned materials and products since before that time. With intent to deceive  
5 Plaintiff JIMMIE LEE LYONS, and others in Plaintiff's position, and with intent that he  
6 and such others should be and remain ignorant of such facts with intent to induce Plaintiff  
7 and such others to alter his and their positions to his and their injury and/or risk and in order  
8 to gain advantages, the following acts occurred:

9 (a) Defendants, their ALTERNATE ENTITIES, and each of them, did not  
10 label any of the aforementioned asbestos-containing materials, products, and equipment  
11 regarding the hazards of such materials and products to the health and safety of Plaintiff and  
12 others in Plaintiff's position working in close proximity with such materials until 1964,  
13 when certain of such materials were labeled by some, but not all, of Defendants, their  
14 ALTERNATE ENTITIES, and each of them, since on or before 1930. By not labeling  
15 such materials, products, and equipment as to their said hazards, Defendants, their  
16 ALTERNATE ENTITIES, and each of them, caused to be suggested as a fact to Plaintiff  
17 that it was safe for Plaintiff JIMMIE LEE LYONS to work in close proximity to such  
18 materials, when in fact it was not true; and Defendants, their ALTERNATE ENTITIES, and  
19 each of them, did not believe it to be true;

20 (b) Defendants, their ALTERNATE ENTITIES, and each of them,  
21 suppressed information relating to the danger of use of the aforementioned materials,  
22 products, and equipment by requesting the suppression of information to the Plaintiff and  
23 the general public concerning the dangerous nature of the aforementioned materials to  
24 workers, by not allowing such information to be disseminated in a manner which would  
25 have given general notice to the public and knowledge of the hazardous nature thereof when  
26 Defendants, their ALTERNATE ENTITIES, and each of them, were bound to disclose such  
27 information;  
28

1 (c) Defendants, their ALTERNATE ENTITIES, and each of them, sold the  
2 aforementioned products, materials, and equipment to Plaintiff JIMMIE LEE LYONS's  
3 employers, the employers of Plaintiff's, and others without advising Plaintiff JIMMIE LEE  
4 LYONS, his employer, and others of the dangers of use of such materials to persons  
5 working in close proximity thereto when Defendants, their ALTERNATE ENTITIES, and  
6 each of them, knew of such dangers, and had a duty to disclose such dangers all as set forth  
7 herein. By said conduct, Defendants, their ALTERNATE ENTITIES, and each of them,  
8 caused to be positively asserted to Plaintiff JIMMIE LEE LYONS that which was not true  
9 and that which Defendants, their "alternate entities," and each of them had no reasonable  
10 ground for believing to be true, to wit: that it was safe for Plaintiff JIMMIE LEE LYONS to  
11 work in close proximity to such materials;

12 (d) Defendants, their ALTERNATE ENTITIES, and each of them,  
13 suppressed from Plaintiff's medical and scientific data and knowledge of the results of  
14 studies including, but not limited to, the information and contents of the "Lanza Report."  
15 Although bound to disclose it, Defendants, their ALTERNATE ENTITIES, and each of  
16 them, influenced A. J. Lanza, M.D. to change his report, the altered version of which was  
17 published in Public Health Reports, Volume 50, at page 1, in 1935, thereby causing Plaintiff  
18 and others to be and remain ignorant thereof. Defendants, their ALTERNATE ENTITIES,  
19 and each of them, caused Asbestos Magazine, a widely disseminated trade journal, to omit  
20 mention of danger, thereby lessening the probability of notice of danger to the users thereof;

21 (e) Defendants, their ALTERNATE ENTITIES, and each of them,  
22 belonged to, participated in, and financially supported the Asbestos Textile Institute  
23 Industrial Hygiene Foundation and other industry organizations which, for and on behalf of  
24 Defendants, their ALTERNATE ENTITIES, and each of them, actively promoted the  
25 suppression of information of danger to users of the aforementioned products and materials,  
26 thereby misleading Plaintiff JIMMIE LEE LYONS by the suggestions and deceptions set  
27 forth above in this cause of action. The Dust Control Committee, which changed its name  
28

1 to the Air Hygiene Committee, of the Asbestos Textile Institute, was specifically enlisted to  
2 study the subject of dust control. Discussions in this committee were held many times  
3 regarding the dangers inherent in asbestos and the dangers, which arise from the lack of  
4 control of dust, and such information was suppressed from public dissemination from 1946  
5 to a date unknown to Plaintiff at this time;

6 (f) Commencing in 1930 with the study of mine and mill workers at  
7 Asbestos and Thetford Mines in Quebec, Canada, and the study of the workers at  
8 Raybestos-Manhattan plants in Manheim and Charleston, South Carolina, Defendants, their  
9 ALTERNATE ENTITIES, and each of them, knew and possessed medical and scientific  
10 information of the connection between the inhalation of asbestos fibers and asbestosis,  
11 which information was disseminated through the Asbestos Textile Institute and other  
12 industry organizations to all other Defendants, their ALTERNATE ENTITIES, and each of  
13 them, herein. Between 1942 and 1950, the Defendants, their ALTERNATE ENTITIES,  
14 and each of them, suggested to the public as a fact that which is not true and disseminated  
15 other facts likely to mislead Plaintiff. Such facts did mislead Plaintiff and others by  
16 withholding the afore-described medical and scientific data and other knowledge and by not  
17 giving Plaintiff JIMMIE LEE LYONS the true facts concerning such knowledge of danger,  
18 which Defendants, their ALTERNATE ENTITIES, and each of them, were bound to  
19 disclose;

20 (g) Defendants, their ALTERNATE ENTITIES, and each of them, failed to  
21 warn Plaintiff JIMMIE LEE LYONS, and others of the nature of said materials which were  
22 dangerous when breathed and which could cause pathological effects without noticeable  
23 trauma, despite the fact that Defendants, their ALTERNATE ENTITIES, and each of them,  
24 possessed knowledge and were under a duty to disclose that said materials were dangerous  
25 and a threat to the health of persons coming into contact therewith;

26 (h) Defendants, their ALTERNATE ENTITIES, and each of them, failed to  
27 provide Plaintiff JIMMIE LEE LYONS with information concerning adequate protective  
28

1 masks and other equipment devised to be used when applying and installing the products of  
2 the Defendants, their ALTERNATE ENTITIES, and each of them, despite knowing that  
3 such protective measures were necessary, and that they were under a duty to disclose that  
4 such materials were dangerous and would result in injury to Plaintiff JIMMIE LEE LYONS  
5 and others applying and installing such material;

6 (i) Defendants, their ALTERNATE ENTITIES, and each of them, when  
7 under a duty to so disclose, concealed from Plaintiff JIMMIE LEE LYONS the true nature  
8 of the industrial exposure of Plaintiff JIMMIE LEE LYONS and knew that Plaintiff and  
9 anyone similarly situated, upon inhalation of asbestos would, in time, develop irreversible  
10 conditions of pneumoconiosis, asbestosis, and/or cancer. Defendants, their ALTERNATE  
11 ENTITIES, and each of them, also concealed from Plaintiff JIMMIE LEE LYONS and  
12 others that harmful materials to which they were exposed would cause pathological effects  
13 without noticeable trauma;

14 (j) Defendants, their ALTERNATE ENTITIES, and each of them, failed to  
15 provide information of the true nature of the hazards of asbestos materials and that exposure  
16 to these material would cause pathological effects without noticeable trauma to the public,  
17 including buyers, users, and physicians employed by Plaintiff JIMMIE LEE LYONS so that  
18 said physicians could not examine, diagnose, and treat Plaintiff and others who were  
19 exposed to asbestos, despite the fact that Defendants, their ALTERNATE ENTITIES, and  
20 each of them, were under a duty to so inform and said failure was misleading; and

21 (k) Defendants, their ALTERNATE ENTITIES, and each of them, failed to  
22 provide adequate information to physicians and surgeons retained by Plaintiff JIMMIE LEE  
23 LYONS's employers and their predecessor companies, for purposes of making physical  
24 examinations of Plaintiff JIMMIE LEE LYONS and other employees as to the true nature  
25 and risk of such materials and exposure thereto when they in fact possessed such  
26 information and had a duty to disclose it.

27 47. Defendants, their ALTERNATE ENTITIES, and each of them, willfully failed  
28

1 and omitted to complete and file a First Report of Occupational Injury or Illness regarding  
2 Plaintiff's injuries, as required by law, and did willfully fail and omit to file a Report of  
3 Injury and Occupational Disease with the State of California. Plaintiff JIMMIE LEE  
4 LYONS was in the class of persons with respect to whom a duty was owed to file such  
5 reports and who would have been protected thereby if the fact of danger from products  
6 complained of had become known.

7 48. Defendants, their ALTERNATE ENTITIES, and each of them, having such  
8 aforementioned knowledge, and the duty to inform Plaintiff JIMMIE LEE LYONS about  
9 the true facts, and knowing the Plaintiff JIMMIE LEE LYONS did not possess such  
10 knowledge and would breathe such material innocently, acted falsely and fraudulently and  
11 with full intent to cause Plaintiff JIMMIE LEE LYONS to remain unaware of the true facts  
12 and to induce Plaintiff JIMMIE LEE LYONS to work in a dangerous environment, all in  
13 violation of Sections 1708, 1709, and 1710 of the Civil Code of the State of California.

14 49. As a direct and proximate result of such intentional conduct by Defendants,  
15 their ALTERNATE ENTITIES and each of them, Plaintiff JIMMIE LEE LYONS sustained  
16 the injuries and damages alleged herein. The herein-described conduct of said Defendants,  
17 their ALTERNATE ENTITIES, and each of them was and is willful, malicious, fraudulent,  
18 outrageous, and in conscious disregard and indifference to the safety and health of "exposed  
19 persons". Plaintiff, for the sake of example and by way of punishing said Defendants,  
20 seeks punitive damages according to proof.

21 WHEREFORE, Plaintiff prays for judgment against Defendants, their ALTERNATE  
22 ENTITIES, and each of them, as is hereinafter set forth.

### 23 24 PRAYER

25 WHEREFORE, Plaintiff prays judgment against defendants, their ALTERNATE  
26 ENTITIES, and each of them in an amount to be proved at trial, as follows:

- 27 1. For Plaintiff's general damages in an amount that is yet to be  
28

ascertained, but is in excess of \$75,000;

2. For Plaintiff's loss of income, wages and earning potential in an amount that is yet to be ascertained;
3. For Plaintiff's medical and related expenses in an amount that is yet to be ascertained;
4. For Plaintiff's loss of household services in an amount that is yet to be ascertained;
5. For Plaintiff's costs of suit herein;
6. For exemplary or punitive damages according to proof against all defendants.
7. For damages for fraud according to proof; and
8. For such other and further relief as the Court may deem just and proper, including costs and prejudgment interest.

Dated: July 24, 2017

WATERS, KRAUS & PAUL

By: /s/ Andrew Seitz  
KEVIN M. LOEW, ESQ.  
ANDREW SEITZ, ESQ.  
Attorneys for Plaintiff

JURY DEMAND

Plaintiff hereby demands trial by jury of all issues of this cause.

Dated: July 24, 2017.

WATERS, KRAUS & PAUL

By: /s/ Andrew Seitz  
KEVIN M. LOEW, ESQ.  
ANDREW SEITZ, ESQ.  
Attorneys for Plaintiff



**EXHIBIT A**

## EXHIBIT A

Plaintiff: JIMMIE LEE LYONS

Plaintiff's injuries: Plaintiff was diagnosed with epithelioid malignant mesothelioma on or about January 10, 2017.

Retirement Status: Plaintiff was retired at the time of his diagnosis.

The statute of limitations has not expired as defined in California Code of Civil Procedure § 340.2.

<u>Employer</u>	<u>Location of Exposure</u>	<u>Job Title</u>	<u>Exposure Date(s)</u>
U.S. Navy	USS Bairoko  USS Oriskany  Hunters Point Naval Shipyard, San Francisco, California  San Diego Naval Shipyard, San Diego, California  Long Beach Naval Shipyard, Long Beach, California	Machinist Mate	Approximately 1952 to 1956
San Diego Gas & Electric	San Diego, California	Turbine generator operator	Approximately 1956 to 1957
Westinghouse	National Reactor Testing Station	Quality Control Inspector	Approximately 1957 to 1962

	Idaho Falls, Idaho		
Aerojet General	Las Vegas, Nevada	Quality control inspector	Approximately 1964 to 1968
N/A	Personal residences Las Vegas, Nevada Phoenix, Arizona De Queen, Arkansas	Home repair and maintenance	Approximately 1968 to 2000
Heers Construction	Las Vegas, Nevada	Carpenter; superintendant	Approximately 1968 to 1970 and 1973 to 1974
A-to-Z Household Maintenance	Las Vegas, Nevada	Owner	Approximately 1968 to 1974
Caesar's Palace	Las Vegas, Nevada	Maintenance Crew; Assistant Chief Engineer	Approximately 1974 to 1996